IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 2 OF 1998
WITH
CIVIL APPLICATION NO. 8423 OF 1997

Shri Bapuji Waghuji Kandhare ..Appellant

Vs.

Shripati Bhiwa Hulawale
(since deceased) through his
Legal heirs Narayan S.
Hulawale and ors. ..Respondents

Mr. S.J. Rairkar for appellant.
Mr. S.R. Page for respondent nos. 2 to 6.

CORAM: B.H. MARLAPALLE, J.

Date : April 18, 2007.

P.C.:

1. Heard Mr. Rairkar the learned counsel for the appellant and Mr. Page the learned counsel for the respondent nos.2 to 6. Some of the respondents are present in the court and it is stated that the appellant is no more. The appellant was the original plaintiff in Regular Civil Suit No. 1739 of 1981 and the suit was filed for possession of the landed property i.e. Survey No. 405 Hissa No.1 of village

Kondhavale, Taluka Mulshi, District Pune. Though the suit was decreed by the trial court by its judgment and order dated 26/8/1994, the same decree was set aside by allowing a Civil Appeal No. 127 of 1995 by the learned 10th Additional District Judge at Pune vide his judgment and order dated 4/7/1997.

2. The Lower Appellate Court held that the suit was bad for non joinder of Smt.Kamal and her daughter, the LRs of deceased Gajanan. It also held that the plaintiff could not be held to be exclusive owner being the only legal heir of deceased Nathu and Gajanan and the Lower Appellate Court diferred on this issue with the trial court. The trial court has relied upon the mutation entry certified by the revenue authority in favour of the plaintiff and to hold that he is the exclusive owner of the suit land. The Lower Appellate Court held that a mutation entry cannot be the exclusive proof unless the same was corroborated by the oral evidence and the LRs of deceased Gajanan were also heard on the point.

3. Be that as it may, this second appeal has been

waiting for admission for the last about 10 years and as of now the appellant-original plaintiff is no more. His LRs have not taken any steps to come on record and it stands abated.

4. The appeal is dismissed.

5. Civil Application No. 8423 of 1997 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)